

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

7

Frank Nali

v. Plaintiff

Correctional Medical Services, Inc.

Dr. Evans, Dr. C. Hutchinson, Dr. Pramstaller

Dr. Berhane, Dr. Rocco, Dr. Virgillio

Dr. Brady, Dr. Ayers

Defendants, Jointly and Severally

Case: 2:10-cv-12368

Judge: Borman, Paul D

MJ: Majzoub, Mona K

Filed: 06-15-2010 At 03:13 PM

CMP NALI V. CORRECTIONAL MEDICAL SERVICES ET AL (DA)

COMPLAINT

- 1 Plaintiff is a resident and citizen of Wayne County, Michigan.
- 2 Defendant, Correctional Medical Services, Inc (herein after referred to as CMS) was a corporation contracted by Michigan Department of Corrections to provide Health Care to inmates; as an independent contractor.
- 3 CMS main office was located at 12647 Olive Blvd, St. Louis, MO 63141-6345
- 4 CMS does not conduct business anywhere for the Michigan Dept. of Corrections (MDOC).
- 5 Defendants, Dr. Evans, Dr. Hutchinson, Dr. Berhane, Dr. Rocco, Dr. Virgillio and Dr. Brady were all employed by CMS. Also was Dr. Ayers.
- 6 Dr. Pramstaller was employed by MDOC.
- 7 At the time the incidents complained of herein CMS and its employee-doctors conducted business in Michigan. At the present time it is understood that CMS and the above named doctors (except Dr. Pramstaller) do not conduct business for MDOC, and CMS does not maintain a current office in Michigan.
- 8 This action is therefore initiated under diversity of citizen.
- 9 The amount in controversy is over \$ 100,000.00 (one hundred thousand dollars).
- 10 No defendant is immune from the action

COUNT I MALPRACTICE - VIOLATION OF MCL 600.2912

11 Plaintiff incorporates 1 through 10.

12 On or about March 6, 2006 while plaintiff was housed at Kinross Correctional Facility

- 12 plaintiff slipped and fell on the unprotected icy ground, and when it occurred plaintiff felt his knee, or something within his knee snapped. Plaintiff was unable to get up and had to be taken to the health unit, by being placed on a gurney, and transported by a motorized vehicle.
- 13 Plaintiff was given a full length immobilizer, placed over his left leg and transported to the Emergency room at War Memorial Hospital at Sault Saint Marie.
- 14 An X-ray of plaintiff's left knee was performed, and showed no broken bones.
- 15 Plaintiff was seen the following day or two by Dr. Berhane, at which time plaintiff requested to be seen by a specialist, and to have an MRI done.
- 16 Plaintiff was seen several more times (at least three times) by Dr. Berhane, and each time plaintiff requested to be seen by a specialist and to have an MRI done.
- 17 Dr. Berhane consulted with her supervisor Dr. Ivens, regarding obtaining an MRI and a specialist, but Dr. Ivens refused to give her permission to obtain either.
- 18 In order for Dr. Berhane to have obtained permission from Dr. Ivens, she had to inform him of plaintiff's diagnosis, and condition.
- 19 Dr. Berhane failed to properly diagnose plaintiff's condition, as only a sprain; although plaintiff kept emphasizing that something was torn around his knee.
- 20 Plaintiff was subsequently transferred to Hâwatha Correctional Facility where Dr. Ayers also refused to have plaintiff evaluated by a specialist, namely an orthopedic surgeon.
- 21 Dr. Ayers kept telling plaintiff that nothing was wrong with plaintiff's knee in spite of the several complaints of inability to walk properly, no knee reflex in his left knee, inability to extend his left knee, a freely movable left patellar; and obvious signs that part of the muscle in plaintiff's left knee, above the patellar, appeared to have disappeared.
- 22 Eventually an MRI was done, and it revealed a possible anterior cruciate ligament sprain.
- 23 Plaintiff informed Dr. Ayers that the MRI results did not explain the signs and symptoms plaintiff expressed, and continued to request to be evaluated by a specialist, and that request was denied by Dr. Ayers.
- 24 Plaintiff wrote letters to defendants Dr. Hutchinson, and Dr. Pransalter, explaining his condition, and requested to be evaluated by a specialist. They never responded.

25. Plaintiff was then transferred to Ojibway Correctional Facility where Dr. Rocco refused to have plaintiff evaluated by a specialist, and continued to deny anything was wrong with plaintiff's knee, except a possible sprain as revealed by the MRI report.
26. Plaintiff was then transferred to Pugsley Correctional Facility, where Dr. Virgilio refused to have plaintiff evaluated by a specialist, and failed to diagnose plaintiff's condition as anything but a possible sprain.
27. When plaintiff was transferred to Adrian Correctional Facility he again informed Dr. Brady that he needed to be evaluated by a specialist, because the report from the MRI did not 'fit' with the complaints, and the signs and symptoms plaintiff had been experiencing. Dr. Brady refused to have plaintiff evaluated by a specialist.
28. On or about June 28, 2009 plaintiff's conviction was overturned by the federal court and his immediate release from prison was ordered.
29. Plaintiff was finally able to be evaluated by a specialist who diagnosed plaintiff on or about December 21, 2009 with about a 75% quadriceps tendon rupture.
30. On or about June 7, 2010 plaintiff saw another specialist who confirmed the diagnosis was a quadriceps tendon rupture, and no anterior ligament sprain.
31. The standard of care for the type of injury plaintiff suffered, and the signs and symptoms plaintiff complained off to all defendants, was to refer plaintiff to a specialist. They all refused to, or were told not to have plaintiff evaluated by a specialist by their superiors, namely, Dr. Evans, Dr. Hutchinson or Dr. Pramstaller.
32. All defendants also failed to properly diagnose, and/or treat plaintiff's injury correctly.
33. Defendants failure to diagnose plaintiff's injury, and failure to refer plaintiff to be evaluated by a specialist, prevented plaintiff from having very necessary, and immediate surgery to repair the ruptured tendon.
34. Defendants actions amounted to malpractice in violation of the Michigan Statute.
35. Plaintiff has suffered permanent injury, and subsequent disability that prevents him from living a normal life, and from obtaining any meaningful employment.

COUNT II Gross Negligence

- 36 Plaintiff incorporates 1 through 35.
- 37 Defendants had a special duty under physician-patient relationship to diagnose plaintiff's condition accurately, or to refer plaintiff to the proper specialist for proper evaluation and diagnosis; and to treat plaintiff's condition properly, which in the instant case would have been surgical intervention.
- 38 All defendants failed to provide plaintiff with the care he needed, and therefore breached their duty to plaintiff.
- 39 Plaintiff is now permanently disabled, and damaged not just physically, but emotionally and financially.
- 40 Defendants actions or inactions are a direct and proximate cause of plaintiff's disability and damages; but for defendants actions or failures plaintiff would not be disabled physically, emotionally, and financially.

COUNT III RESPONDEAT SUPERIOR

- 41 Plaintiff incorporates 1 through 40.
- 42 Under the principle of Respondent Superior, CMS is liable for the actions and/or failures of its employees that have caused harm to plaintiff.
- 43 Therefore CMS must be liable for defendants actions and/or inactions, as expressed above.

DAMAGES

- 44 Plaintiff incorporates 1 through 43.
- 45 Plaintiff has been damaged by the permanent disability, emotional and mental stress, financial loss, and the inability to obtain gainful employment. Social disengagement, and family disassociation; and the inability to pursue a normal existence.

RELIEF SOUGHT

Plaintiff requests an award in favor of plaintiff on all counts, in excess of \$100,000.00 punitive damages in excess of \$100,000.00, compensatory damages in excess of \$100,000.00 plus interest and costs, and any other award deemed necessary.

DEMAND FOR TRIAL BY JURY

Now comes plaintiff and requests a trial by jury, and all awards to be decided by the jury.

Date : 6/15/10

Submitted by:

Frank

Frank Meli

484 Allard Rd

Grosse Pointe Farms, MI 48236

CIVIL COVER SHEET

County in which action arose

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Frank Nali

DEFENDANTS

Correctional Medical Services
et al

(b) County of Residence of First Listed Plaintiff

Wayne

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

ST. LOUIS, MO

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

In Pro Per 484 Allard Rd
Grasse Pointe Farms, MI 48236

Case: 2:10-cv-12368

Judge: Borman, Paul D

MJ: Majzoub, Mona K

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP

(For Diversity Cases Only)

Citizen of This State

PTF

DEF

Incorporated or Principal Place of Business in This State

PTF

D

Citizen of Another State

☐ 2☒ 2

Incorporated and Principal Place of Business in Another State

☐ 5☒ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3

Foreign Nation

☐ 6☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER SUITS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPRIETARY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Mat <input type="checkbox"/> 894 Energy Allocation A <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determined Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Medical Malpractice

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

over \$100,000.00

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☒ Yes
☐ No

If yes, give the following information:

Court: Western District

Case No.: Not docketed as yet

Judge: Not known as yet

Notes: Some defendants in this case are also defendants in the Western District